City Council Atlanta, Georgia 03-0-1999

SUBSTITUTE ORDINANCE BY: ZONING COMMITTEE U-03-26 12-11-03

WHEREAS, the City Council finds that it is in the public interest to allow the owners of certain properties to transfer their development density to adjacent property; and

WHEREAS, Archstone-Smith Operating Trust executed a recordable agreement (Exhibit A) setting forth the conditions under which this Transfer of Excess Development Rights is to be approved; and

WHEREAS, the City Council finds that the area of agreement is compatible, regular and logical in relation to the form of the development proposes; and

WHEREAS, the proposed development for the area of agreement as a whole conforms to the intent and requirements set forth in the applicable provisions of the Zoning Ordinance; and

WHEREAS, the agreement assures future protection of the public interest and achievement of public objectives to the same or a higher degree than would application of the regulations to the individual properties; and

WHEREAS, the agreement has been approved by the Department of Law (Exhibit B).

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, as follows:

SECTION 1. Under the provisions of Section 16-28.023 of the Zoning Ordinance of the City of Atlanta, a Special Use Permit for a Transfer of Excess Development Rights is hereby approved. Said use is granted to Archstone-Smith Operating Trust, its successors, Assigns and all subsequent owners. Those Excess Development Rights, as specified in the attached site plan entitled "Westchester at Roswell Road", prepared by The Preston Partnership, LLC, dated September 10, 2003 and marked received by the Bureau of Planning, October 14, 2003, are to be transferred from 1) the rear of 257-281 Alberta Drive, N.E. and the rear of 3290-3304 Mathieson Drive, N.E. to 2) 3301 and 3315 Roswell Road, N.E. Said tracts being more particularly described by the attached legal descriptions identified as Donor parcel and Recipient parcel.

SECTION 2. That this amendment is approved subject to the following development conditions:

- 1. The above referenced conditional site plan shall be revised to show the following elements.
  - a. Textured pavement shall be installed across the driveway to the parking deck to provide a pedestrian crosswalk.
  - b. The developer shall install a wall, at least 6-feet high, along the property lines shared by the subject property and the adjoining C-1 property to the south. The developer shall plant trees between the wall and the proposed residential building that is proposed to be constructed on the south portion of the subject property, near the adjoining C-1 property.
  - c. The area between the fire lane and the property line shall remain undisturbed.

SECTION 3. That this amendment is approved under the provisions of Section 16-25.003 of the Zoning Ordinance of the City of Atlanta, entitled "Special Use Permits, Procedural Requirements," and the Director of the Bureau of Buildings, shall issue a building permit only in compliance with the applicable provisions of this part. The applicable conditional site plan and all other conditions hereby imposed, including but not limited to those conditions set forth in the applicant's six (6) executed agreements, are enumerated by attachment and are hereby made a part of this Ordinance. Said executed agreements are identical except as to signature. One (1) agreement is attached for reference and enforcement purposes.

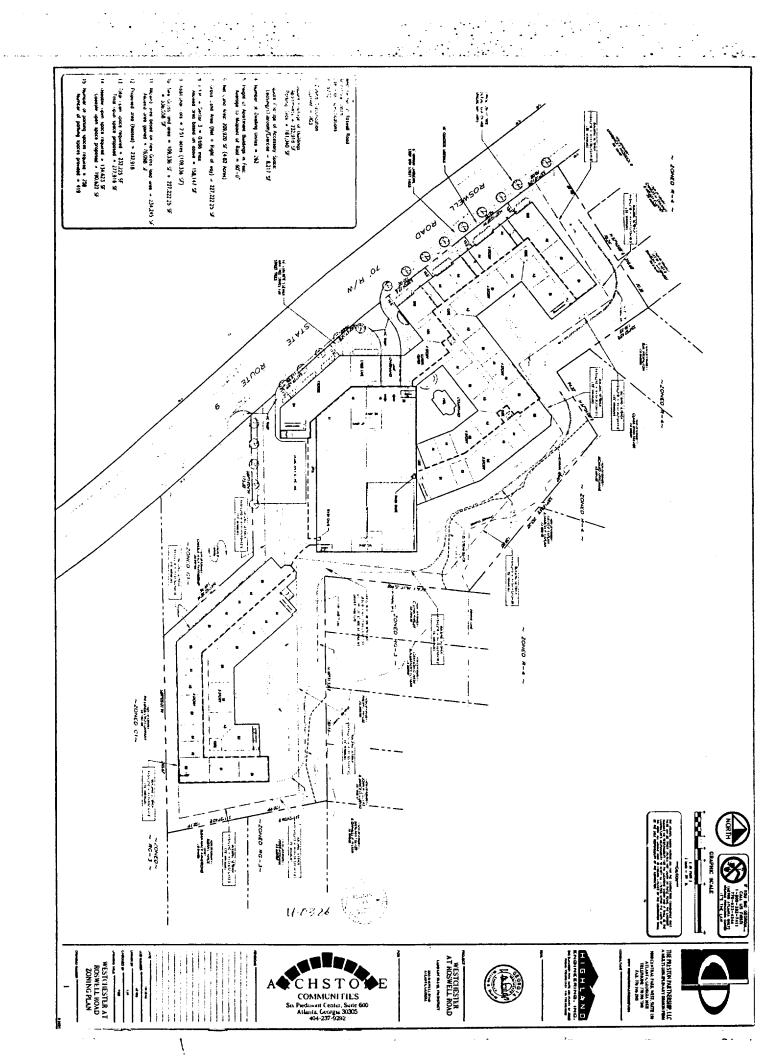
SECTION 4. The Special Use Permit hereby approved does not authorize the violation of any zoning district regulations.

SECTION 5. That the provisions of Section 16-25.002(2) are hereby modified as they apply to this Special Use Permit so as to provide that this Special Use Permit shall apply to the subject properties in perpetuity without regard to their ownership (as is provided for in the agreement (Exhibit A) executed by Archstone-Smith Operating Trust which agreement sets forth further conditions to the Special Use Permit and is attached to this ordinance and is incorporated herein and hereby made a part of this Special Use Permit) and no transfer of the Special Use Permit [as defined in Section 16-25.002(2)(a)] shall be required.

SECTION 6. That the Special Use Permit, including the incorporated agreement (Exhibit A) executed by Archstone-Smith Operating Trust shall be recorded with the Clerk of Superior Court of Fulton County in accordance with the provisions of Section 16-28.023(4).

SECTION 7. That the Special Use Permit shall be recorded by the Bureau of Planning on the official zoning map (referencing both the Donor and Receipient parcels) in accordance with the provisions of Section 16-28.023(4).

SECTION 8. That all ordinances or parts of ordinance in conflict with this ordinance are hereby repealed.



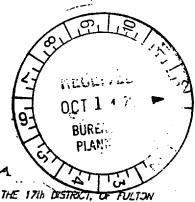
# LEGAL DESCRIPTION: (7 TRACTS AREA ONLY IN ZONE RG 3)

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LYING AND BEING IN LAND LOTS 61, 98, & 99 OF THE 17th DISTRICT FULTON COUNTY, GEORGIA AND HAVING THE FOLLOWING METES AND BOUNDS TO WIT.

BEGINNING AT THE LAND LOT CORNER COMMON TO LAND LOTS 61,62, 98, & 99 AT A POINT, THE POINT OF BEGINNING (P.O.B); THENCE TURNING AND CONTINUING ALONG THE EAST LINE OF LAND LOT 99 AND THE ZONING LINE BETWEEN ZONES RG3 AND R4 SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST (S00°00'00"W) A DISTANCE OF 199.99' TO A POINT: THENCE TURNING AND LEAVING SAID LINE AND CONTINUING SOUTH 89 DEGREES 19 MINUTES 41 SECONDS WEST (S89°19'41"W) A DISTANCE OF 216.31' TO A 3/4" OPEN TOP PIPE FOUND; THENCE TURNING AND CONTINUING ALONG THE LINE OF N/F MARTY STORCH & RYWKA KYWKA NORTH 11 DEGREES 27 MINUTES 43 SECONDS WEST (N11°27'43"W) A DISTANCE OF 102.19' TO A # 4 REBAR FOUND; THENCE TURNING AND CONTINUING ALONG SAID LINE NORTH 11 DEGREES 24 MINUTES 55 SECONDS WEST (N11°24'55"W) A DISTANCE OF 101.01' TO A # 4 REBAR FOUND POINT; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 89 DEGREES 37 MINUTES 45 SECONDS WEST (S89°37'45"W) A DISTANCE OF 140.62' TO A 1/2" CRIMP TOP PIPE FOUND; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 89 DEGREES 19 MINUTES 05 SECONDS WEST (S89°19'05"W) A DISTANCE OF 69.87' TO A 1" OPEN TOP PIPE FOUND; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 89 DEGREES 31 MINUTES 53 SECONDS WEST (S89°31'53"W) A DISTANCE OF 69.62' TO A # 4 REBAR FOUND: THENCE TURNING AND CONTINUING ALONG SAID LINE NORTH 06 DEGREES 21 MINUTES 51 SECONDS EAST (N06°21'51"E) A DISTANCE OF 179.79' TO A POINT ON THE ZONING LINE BETWEEN ZONES RG3 AND R4; THENCE TURNING AND CONTINUING ALONG THE ZONING LINE BETWEEN ZONES RG 3 AND R4 NORTH 89 DEGREES 31 MINUTES 53 SECONDS EAST (N89°31'53"E) A DISTANCE OF 348.42' TO POINT; THENCE TURNING AND LEAVING SAID ZONING LINE AND CONTINUING SOUTH 06 DEGREES 09 MINUTES 31 SECONDS WEST (S06°09'31"W) A DISTANCE OF 179.07' TO A # 3/4" ROD FOUND; THENCE TURNING AND CONTINUING ALONG THE LINE OF N/F FREDERRICK & SUSAN SCOTT NORTH 89 DEGREES 20 MINUTES 17 SECONDS EAST (N89°20'17"E) A DISTANCE OF 187.58' TO THE POINT-OF-BEGINNING AND CONTAINING 2.51 ACRES (109,491 SQ. FT.).

> Davar baron N-03-5P

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#### LEGAL DESCRIPTION - TRACTA

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING AND BEING IN LAND LOTS 99 IN THE 17th DISTRICT, OF FULTON
COUNTY, GEORGIA AND BEING MORE FULLY SHOWN AND DESIGNATED ON AN ALTA/ACSM LAND TITLE SURVEY FOR THE CHICAGO
TITLE INSURANCE COMPANY AND TRUSTEES OF THE ARCHSTONE-SMITH OPERATING TRUST, DATED 02/20/02 AND LAST REVISED
04/10/02, PREPARED BY HIGHLAND ENGINEERING, INC., BEARING THE SEAL OF STEVEN AL HARDY R.L.S. \$2662 AND HAVING THE
FOLLOWING METES AND BOUNDS TO MIT:

COMMENCING AT THE POINT OF INTERSECTION OF ROSWELL ROAD AND ANDREWS DRIVE AND BEING THE POINT OF COMMENCEMENT;
THENCE TURNING NORTH 29 DEGREES 26 MINUTES 54 SECONDS WEST (N29'26'54'W) A DISTANCE OF 600.48' TO A 1/2" REBAR
FOUND LOCATED ON THE NORTH SIDE OF ROSWELL ROAD (70' R/W) AND BEING THE TRUE POINT—OF—BEGINNING FOR TRACT A;
THENCE TURNING AND FOLLOWING ALONG THE MORTH RICHT—OF—WAY OF ROSWELL ROAD MORTH 41 DEGREES 59 MINUTES 53
SECONDS WEST (N41'59'53'W) A DISTANCE OF 119.35' TO A \$4 REBAR SET; THENCE TURNING AND LEAVING SAID RICHT—OF—WAY
NORTH 89 DEGREES 29 MINUTES 26 SECONDS EAST (N89'29'26'E) A DISTANCE OF 280.07' TO AN \$4 REBAR SET; THENCE
TURNING AND CONTINUING NORTH 89 DEGREES 31 MINUTES 53 SECONDS EAST (N89'31'53'E) A DISTANCE OF 280.13' TO A \$4
REBAR SET; THENCE TURNING AND CONTINUING SOUTH 11 DEGREES 24 MINUTES 43 SECONDS EAST (S11'24'06'E) A DISTANCE OF
100.99' TO A \$4 REBAR SET; THENCE CONTINUING SOUTH 11 DEGREES 27 MINUTES 43 SECONDS EAST (S11'27'43'E) A DISTANCE
OF 102.19' TO A 3/4" OPEN TOP FOUND: THENCE TURNING AND CONTINUING SOUTH 89 DEGREES 05 MINUTES 01 SECONDS WEST
(S89'05'01'E) A DISTANCE OF 245.67' TO A PK NAIL FOUND; THENCE TURNING AND CONTINUING NORTH 41 DEGREES 42 MINUTES
38 SECONDS WEST (N41'42'36'W) A DISTANCE OF 149.96' TO A PK NAIL FOUND; THENCE TURNING AND CONTINUING SOUTH 89
DEGREES 14 MINUTES 04 SECONDS WEST (S89'14'04'W) A DISTANCE OF 175.20' TO A 1/2" REBAR FOUND AND BEING THE
POINT—OF—BEGINNING (P.O.B.) FOR TRACT A AND SAID TRACT CONTINUING 1.81 ACRES (78,845 Sq. FL.).

#### LEGAL DESCRIPTION - TRACT B

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING AND BEING IN LAND LOTS 98 IN THE 17th DISTRICT, OF FULTON COUNTY, GEORGIA AND BEING MORE FULLY SHOWN AND DESIGNATED ON AN ALTA/ACSIA LAND TITLE SURVEY FOR THE CHICAGO TITLE INSURANCE COMPANY AND TRUSTEES OF THE ARCHSTONE—SMITH OPERATING TRUST, DATED 02/20/02 AND LAST REVISED 04/10/02, PREPARED BY HIGHLAND ENGINEERING, INC., BEARING THE SEAL OF STEVEN IN. HARDY R.L.S. \$2562 AND HAVING THE FOLLOWING METES AND BOUNDS TO WIT:

COMMENCING AT THE POINT OF INTERSECTION OF ROSWELL ROAD AND ANDREWS DRIVE AND BEING THE POINT OF COMMENCEMENT; THENCE TURNING MORTH 29 DEGREES 26 MINUTES 54 SECONDS WEST (N29'26'54'W) A DISTANCE OF 600.48' TO A 1/2" REBAR FOUND LOCATED ON THE NORTH SIDE OF ROSWELL ROAD (70' R/M) AND BEING THE POINT-OF-BEGINNING FOR TRACT A: THENCE FOLLOWING THE NORTH RICHT-OF-WAY OF SAID ROAD NORTH 41 DEGREES 59 MINUTES 53 SECONDS WEST (N41'59'53'W) A DISTANCE OF 119.35" TO A #4 REBAR SET AND BEING THE TRUE POINT-OF-BEGINNING FOR TRACT B: THENCE CONTINUING ALONG THE NORTH RIGHT-OF WAY OF SAID ROAD NORTH 40 DEGREES 57 MINUTES 04 SECONDS WEST (N40"57"04"W) A DISTANCE OF 70.00' TO AN \$4 REBAR SET; THENCE FOLLOWING ALONG THE NORTH RIGHT-OF-WAY OF SAID ROAD NORTH 38 DEGREES 09 MINUTES 27 SECONDS WEST (N38'09'27'W) A DISTANCE OF 165.00' TO A #4 REBAR SET LOCATED ON THE WORTH RIGHT-OF-WAY OF ROSWELL ROAD (70' RAW); THENCE FOLLOWING THE NORTH RIGHT-OF-WAY OF SAID ROAD NORTH 37 DEGREES 10 MINUTES 07 SECONDS WEST (N3710'07'W) A DISTANCE OF 70.00' TO A \$4 REBAR SET LOCATED ON NORTH RICHT-OF-WAY OF ROSWELL ROAD (70' R/W); THENCE CONTINUING ALONG SAID RIGHT-OF-WAY NORTH 37 DEGREES 10 MINUTES 10 SECONDS WEST (N37-10'10'W) A DISTANCE OF 70.00" TO A 1/2" REBAR FOUND LOCATED ON THE NORTH RICHT-OF-WAY OF ROSWELL ROAD (70" R/W): THENCE TURNING AND LEAVING-SAID RIGHT-OF-WAY NORTH 57 DEGREES 43 MINUTES 08 SECONDS EAST (N5743'08'E) A DISTANCE OF 210.60' TO A 1" OPEN TOP FOUND: THENCE TURNING AND CONTINUING SOUTH 34 DEGREES 57 MINUTES 45 SECONDS EAST (\$34'57'45"E) A DISTANCE OF 139.70' TO A 3/4" OPEN TOP FOUND; THENCE TURNING AND CONTINUING NORTH 57 DEGREES 34 MINUTES OD SECONDS EAST (N5734'00'E) A DISTANCE OF 94.37' TO A 5/8" REBAR FOUND; THENCE TURNING AND CONTINUING SOUTH 50 DEGREES 18 MINUTES 35 SECONDS EAST (S50'18'35'E) A DISTANCE OF 253.00' TO A #4 REBAR SIT: THENCE TURNING AND CONTINUING SOUTH OF DEGREES 21 MINUTES 51 SECONDS WEST (SOF21'51'W) A DISTANCE OF 179.79' TO A \$4 REBAR SET; THENCE TURNING AND CONTINUING SOUTH 89 DEGREES 29 MINUTES 26 SECONDS WEST (S89"29"26"W) A DISTAIRE OF 280.07" TO 14 REBAR SET LOCATED ON THE NORTH RIGHT-OF-WAY OF ROSWELL ROAD (70' R/W) AND BEING THE TRUE POINT-OF-BEGINNING FOR TRACT B AND SAID TRACT CONTAINING 3.01 ACRES (131,075 So. FL.).

Recipient Paral

After Recording Please Return to: Wendy S. Butler, Esq. Alston & Bird LLP 1201 W. Peachtree Street, N.E. Atlanta, Georgia, 30309

### AGREEMENT FOR THE TRANSFER OF DEVELOPMENT RIGHTS

This AGREEMENT FOR THE TRANSFER OF DEVELOPMENT RIGHTS (this "Agreement") is made and entered into as of Tork 25", 2003 by Tork 5. Alston Transferor"), and ARCHSTONE-SMITH OPERATING TRUST, a Trust organized under the laws of the State of Georgia ("Transferee") (hereafter Transferor and Transferee are collectively referred to as "Parties" to this Agreement).

### RECITALS

WHEREAS, Transferor is the owner of that certain real property located in the City of Atlanta, County of Fulton, State of Georgia located at 261 Achter and more particularly described on Exhibit A attached hereto and incorporated herein by reference for all purposes (the "Transferor's Property"); and

WHEREAS, Transferee is the contract purchaser of that certain real property located at 3301 and 3315 Roswell Road, located in the City of Atlanta, County of Fulton, State of Georgia adjacent or near Transferor's Property, and more particularly described on <a href="Exhibit B">Exhibit B</a> attached hereto and incorporated herein by reference for all purposes (the "Transferee's Property"); and

WHEREAS, the Transferor's Property is zoned to both the R-4 and RG-3 zoning classifications, and the Transferee's Property is zoned to the RG-3 zoning classification; and

WHEREAS, Transferor can use his property only in accordance with the provisions of the R-4 zoning classification and cannot develop any part of his property for uses or densities allowed under the RG-3 classification; and

WHEREAS, according to the terms of an ordinance proposed to be introduced and enacted by the Atlanta City Council amending Section 16-28.023 of the

=== 1 U-03-Z6 ExhibitA

City of Atlanta Zoning Code to allow the transfer of development rights (a copy of which is attached hereto as Exhibit C and referred to herein as the "Ordinance"), Transferor will be able to transfer all development rights applicable to his property under the RG-3 zoning classification and retain the right to use his entire property thereafter as if the entire property were zoned to the R-4 zoning classification; and

WHEREAS, In accordance with the Ordinance, the Parties hereto are desirous of entering into an agreement providing for the transfer and sale of the development rights applicable to that portion of Transferor's Property zoned to the RG-3 zoning classification ("Transferor's Development Rights") and of reducing that agreement to writing.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### AGREEMENT

1. Incorporation of Recitals The Recitals set forth above (including, without limitation, the defined terms set forth therein) are hereby incorporated by reference into this Agreement and made a part hereof as if set forth in their entirety in this Section 1.

#### 2. Transfer of Development Rights

- Transferor does hereby agree to grant, bargain, sell, transfer, assign, convey, set over and deliver unto Transferee Transferor's Development Rights as it relates to the RG-3 zoning classification on Transferor's Property in accordance with the terms of the Ordinance and this Agreement
- 2.2 The parties hereby acknowledge and agree that other than the transfer of Transferor's Development Rights, Transferee shall have no right, title or interest in Transferor's Property, and Transferor shall remain the record owner of title to Transferor's Property.
- 2.3 Transferee shall not be obligated to consummate this transaction unless and until Transferee has been transferred the excess development density rights of the owners of the other six lots located adjacent or near Transferor's Property and Transferee's Property (the seven properties from which development rights are to be transferred to Transferee are 257, 261, 265, 277 and 281

Alberta Drive and 3304 and 3296 Mathieson Drive).

#### 3. Purchase Price

The purchase price ("Purchase Price") for the transfer of the Transferor's Development Rights to be paid by Transferee to Transferor shall be the amount of TWENTY THOUSAND DOLLARS (\$20,000.00).

W-03-26 Enhibit A

City of Atlanta Zoning Code to allow the transfer of development rights (a copy of which is attached hereto as Exhibit C and referred to herein as the "Ordinance"), Transferor will be able to transfer all development rights applicable to his property under the RG-3 zoning classification and retain the right to use his entire property thereafter as if the entire property were zoned to the R-4 zoning classification; and

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W-03-26 Enchibit A

- 3.2 All payments by Transferee to Transferor pursuant to this Agreement shall be paid into an escrow account to be established at Alston & Bird LLP for purposes of this Agreement.
- 3.3 Transferee shall pay all legal fees and expenses associated with this Agreement.
- 3.4 Transferee shall pay Transferor a sum equal to \$2,500.00 in immediately available funds upon the execution of this Agreement by the Transferee and all seven Transferors contemplated and identified in Section 2.3.2 above ("Closing").
- 3.5 Transferee shall pay Transferor a sum equal to \$2,500.00 in immediately available funds upon the adoption of the Ordinance and expiration of any related appeal period.
- 3.6 The remaining 75% (\$15,000.00) of the Purchase Price for Transferor's Development Rights will be paid to Transferor in immediately available funds within 30 days of Transferee's closing on the purchase of Transferee's Property
- 3.7 In the event that Transferee does not close on the purchase of Transferee's Property:
  - 3.7.1 Transferee is under no obligation to pay the remaining 75% (\$15,000.00) of the Purchase Price to Transferor;
  - 3.7.2 Transferor is under no obligation to return the 25% (\$5,000.00) paid by Transferee in consideration of and expenses related to this Agreement; and
  - 3.7.3 The Transfer of Development Rights contemplated pursuant to this Agreement shall be null and void and remain under the ownership and control of the Transferor and applicable to Transferor's Property.

# 4. <u>Development Conditions</u>

- 4.1 Transferor and Transferee agree to the following as it relates to the development of Transferee's Property:
  - Subject to approval by relevant departments of the City of Atlanta, Archstone will install the traffic calming measures, walls and landscaping as indicated on the plan entitled "Roswell Road Apartments Traffic Calming," prepared by URS Corporation, dated July 12, 2002 ("Neighborhood Plan"). Archstone's work on the improvements shown on the plan shall begin concurrently with the commencement of construction on the Property. Archstone will be responsible for replacement of any vegetation as shown on the Neighborhood Plan under the terms of any warranty Archstone receives for installation of such landscaping; otherwise. maintenance and replacement of such landscaping will be the responsibility of the Buckhead Forest Civil Association (BFCA) or the owners of any

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private property on which such landscaping is placed. Archstone will be responsible for implementation of the Neighborhood Plan (subject to City approval) even if the cost is not covered by impact fees from their development. Archstone will use its best efforts to obtain City approval for implementation of the Neighborhood Plan. The cost of the improvements on the Neighborhood Plan is estimated to be \$60,000. Archstone will pay the estimated cost of any of the improvements on the Neighborhood Plan which are not allowed by the City to the BFCA, such payment to be made within 60 days after issuance of a building permit for construction of their development on the Property.

- 4:1.2 No construction vehicles or traffic shall enter the Buckhead Forest neighborhood (Alberta, Matheson and West Shadowlawn) at any time other than to complete the construction of items as indicated on the Neighborhood Plan.
- 4.1.3 Archstone will coordinate all pest extermination on the Property in connection with the demolition of the existing improvements.
- 4.1.4 Subject to the Approval of the City Arborist, Archstone will install landscaping in the rear of the Property as indicated on the plan entitled "Tree Replacement Plan for Westchester at Roswell Road," prepared by The Preston Partnership, LLC and dated September 17, 2002. Archstone or its contractors will also be responsible for any trees on lots in Buckhead Forest abutting the Property which are killed as a result of Archstone's construction activities on the Property.
- 4.1.5 The BFCA agrees to support Archstone's application for redevelopment of the Property with the City of Atlanta, so long as such application is consistent with the terms of this Agreement.
- 4.1.6 Archstone's obligations hereunder are contingent on any and all approvals necessary for the development of the Property.
- 4.1.7 The property shall be developed (subject to the required reduction in size/density) in accordance with the site plan entitled "Westchester at Roswell Road Zoning Plan," prepared by Highland Engineering, dated 5/17/02 ("Site Plan").
- 4.1.8 The building will have the general architectural style and materials as indicated in the renderings by Silvestar, dated 6/18.
- 4.1.9 The FAR of the development will not exceed 1.3.

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- 4.1.10 Apartment building heights will not exceed 55 feet as measured from the first finished floor to the midpoint of the roof in the four-story building sections.
- 4.1.11 The parking deck will be designed so that its levels correspond to the residential floor levels with the exception of one level above the highest residential floor. The deck will contain a maximum of 500 parking spaces.
- 4.1.12 All trees that are to be taken out will be marked with orange paint prior to removal and the issuance of any grading permits. Tree-save fencing shall be erected at the rear property line of the residences on Alberta Drive prior to any grading permits being issued. All trees to be saved will be marked on the Site Plan.
- 4.1.13 Erosion protection barriers shall be installed at the approved line along the creek prior to any grading permits being issued.
- 4.1.14 The development will detain stormwater and release it at a rate which will not exceed 50% of the site's current development rate. Best management practices will be used for a water quality treatment system to treat the first ½ inch of rainfall over 50% of the improved surface on the site prior to its release from the property. All detention ponds will be inspected, cleaned and repaired every five years, with certification of such work provided to BFCA.
- 4.1.15 The development will contain a minimum of 20 bicycle racks.
- 4.1.16 The applicant shall draft, request introduction or and support appropriate legislation that will require that all traffic impact fees generated from this development will be used for implementation of the traffic improvements indicated on the Neighborhood Plan.
- 4.1.17 A "Good Neighbor Committee" consisting of a representative from the developer, the job site project the BFCA traffic and representative, and at least one other appointed member of the BFCA shall be formed to coordinate activities, address issues and resolve problems which may arise during and after construction. This group will meet as necessary for communication with the BFCA. The applicant will notify the BFCA of a telephone number which will be answered or on which messages may be left 24 hours a day, 7 days a week regarding problems with construction on the property.

### 5. Closing

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U-03-26

- 5.1 Transferee shall pay to Transferor the Purchase Price pursuant to the terms of this Agreement;
- 5.2 Transferor shall execute and deliver to Transferee a document evidencing the transfer of Transferor's Development Rights; and
- 5.3 Transferor shall execute and deliver such other documents and instruments as are helpful or necessary to evidence or effectuate the transactions contemplated hereby.

### 6. Representations and Warranties

- As of the date hereof and as of the date of Closing, Transferor hereby represents and warrants as follows:
  - 6.1.1 That as of the date hereof, record title to Transferor's Property is vested in Transferor's name, and Transferor is the record owner of fee simple title to Transferor's Property,
  - 6.1.2 That there are no other persons or entities known to or claiming through Transferor who have any rights in Transferor's Development Rights, and
- 6.2 That Transferor will not take any action during the term of this Agreement which would hamper or impede the consummation of transfer of the Transferor's Development Rights or which would cause any of the above representations and/or warranties to become untrue, inaccurate or incomplete in any respect.

### 7. Default

7.1 In the event of a default, breach of warranty or other representation contained in this Agreement by Transferor, Transferee shall be entitled to exercise any and all rights and remedies which may be available to Transferee, at law and at equity, on account of Transferor's default or breach.

### 8. Miscellaneous

- 8.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument.
- This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.
- 8.3 This Agreement and the legal relations between the parties hereto shall be governed by and construed and enforced in accordance



U-03-76 Eahibit A with the laws of the State of Georgia, without regard to its principles of conflicts of law.

IN WITNESS WHEREOF, this instrument has been executed as of (but not necessarily on) this 25 day of Juni , 2007. TRANSFEROR: TRANSFEREE: ARCHSTONE-SMITH OPERATING TRUST Print Name: EXECUTIVE VICE PRESIDENT Title: Surfer to and suluculed before me this 3d of July, 2003.

Notary Public, Cobb County, Georgia My Commission Expires October 30, 2006.

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### EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 98 of the 17th District, Fulton County, Georgia, being Lot 14 of Lanatta Trading Company Subdivision, as per plat recorded in Plat Book 21, Page 11 1/2, Fulton County Records, which plat is incorporated herein by this reference and made a part of this description.

W-03-26 Exhibit A

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### EXHIBIT B

### LEGAL DESCRIPTION - TRACTA

ALL THAT CERTAIN PIECE. PARCEL OR LOT OF LAND, LYING AND BEING IN LAND LOTS 99 IN THE 17th DISTRICT, OF FULTON
COUNTY, GEORGIA AND BEING MORE FULLY SHOWN AND DESIGNATED ON AN ALTA/ACSM LAND TITLE SURVEY FOR THE CHICAGO
TITLE INSURANCE COMPANY AND TRUSTEES OF THE ARCHSTONE—SMITH OPERATING TRUST, DATED 02/20/02 AND LAST REVISED
04/10/02, PREPARED BY HIGHLAND ENGINEERING, INC., BEARING THE SEAL OF STEVEN IN. HARDY R.L.S. \$2662 AND HAVING THE
FOLLOWING METES AND BOUNDS TO WIT:

COMMENCING AT THE POINT OF INTERSECTION OF ROSWELL ROAD AND ANDREWS DRIVE AND BEING THE POINT OF COMMENCEMENT; THENCE TURNING MORTH 29 DEGREES 26 MINUTES 54 SECONDS WEST (N29'26'54'W) A DISTANCE OF 600.48" TO A 1/2" REBAR FUND LOCATED ON THE NORTH SIDE OF ROSWELL ROAD (70' R/W) AND BEING THE TRUE POINT—OF—BEGINNING FOR TRACT A; THENCE TURNING AND FOLLOWING ALONG THE MORTH RIGHT—OF—WAY OF ROSWELL ROAD NORTH 41 DEGREES 59 MINUTES 53 SECONDS WEST (N41'59'53'W) A DISTANCE OF 119.35' TO A \$4 REBAR SET; THENCE TURNING AND LEAVING SAID RIGHT—OF—WAY NORTH 89 DEGREES 29 MINUTES 26 SECONDS EAST (N89'29'26'E) A DISTANCE OF 280.07' TO AN \$4 REBAR SET; THENCE TURNING AND CONTINUING SOUTH 89 DEGREES 31 MINUTES 53 SECONDS EAST (N89'31'53'E) A DISTANCE OF 280.13' TO A \$4 REBAR SET; THENCE TURNING AND CONTINUING SOUTH 11 DEGREES 24 MINUTES 06 SECONDS EAST (\$11'24'06'E) A DISTANCE OF 100.99' TO A \$4 REBAR SET; THENCE CONTINUING SOUTH 11 DEGREES 27 MINUTES 43 SECONDS EAST (\$11'24'06'E) A DISTANCE OF 102.19' TO A \$4' OPEN TOP FOUND: THENCE TURNING AND CONTINUING SOUTH 89 DEGREES 05 MINUTES 01 SECONDS WEST (\$89'05'01'E) A DISTANCE OF 149.96' TO A PK NAIL FOUND; THENCE TURNING AND CONTINUING NORTH 41 DEGREES 42 MINUTES 38 SECONDS WEST (\$41'42'38'W) A DISTANCE OF 149.96' TO A PK NAIL FOUND; THENCE TURNING AND CONTINUING SOUTH 89 DEGREES 14 MINUTES 04 SECONDS WEST (\$89'14'04'W) A DISTANCE OF 175.20' TO A 1/2" REBAR FOUND AND BEING THE POINT—OF—BEGINNING (P.O.B.) FOR TRACT A AND SAID TRACT CONTINUING 1.81 ACRES (78,845 Sq. FL.).

#### LEGAL DESCRIPTION - TRACT B

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING AND BEING IN LAND LOTS 98 IN THE 17th DISTRICT, OF FULTON COUNTY, GEORGIA AND BEING MORE FULLY SHOWN AND DESIGNATED ON AN ALTA/ACSM LAND TITLE SURVEY FOR THE CHICAGO TITLE INSURANCE COMPANY AND TRUSTEES OF THE ARCHSTONE—SMITH OPERATING TRUST, DATED 02/20/02 AND LAST REVISED 04/10/02, PREPARED BY HIGHLAND ENGINEERING, INC., BEARING THE SEAL OF STEVEN M. HARDY R.L.S. #2662 AND HAVING THE FOLLOWING METES AND BOUNDS TO WIT.

COMMENCING AT THE POINT OF INTERSECTION OF ROSWELL ROAD AND ANDREWS DRIVE AND BEING THE POINT OF COMMENCEMENT; THENCE TURNING MORTH 29 DEGREES 26 MINUTES 54 SECONDS WEST (N28'26'54'W) A DISTANCE OF 600.48' TO A 1/2" REBAR FOUND LOCATED ON THE NORTH SIDE OF ROSWELL ROAD (70' R/W) AND BEING THE POINT-OF-BEGINNING FOR TRACT A: THENCE FOLLOWING THE NORTH RIGHT-OF-WAY OF SAID ROAD NORTH 41 DEGREES 59 MINUTES 53 SECONDS WEST (N41°59°53°W) A DISTANCE OF 119.35" TO A #4 REBAR SET AND BEING THE TRUE POINT-OF-BEGINNING FOR TRACT B; THENCE CONTINUING ALONG THE NORTH RIGHT-OF WAY OF SAID ROAD NORTH 40 DEGREES 57 MINUTES 04 SECONDS WEST (N40"57"04"W) A DISTANCE OF 70.00" TO AN \$4 REBAR SET; THENCE FOLLOWING ALONG THE NORTH RIGHT-OF-WAY OF SAID ROAD NORTH 38 DEGREES 09 MINUTES 27 SECONDS WEST (H38'09'27'W) A DISTANCE OF 165.00' TO A #4 REBAR SET LOCATED ON THE NORTH RIGHT-OF-WAY DF ROSWELL ROAD (70' R/W); THENCE FOLLOWING THE NORTH RIGHT-OF-WAY OF SAID ROAD NORTH 37 DEGREES 10 MINUTES 07 SECONDS WEST (N37'10'07'W) A DISTANCE OF 70.00' TO A \$4 REBAR SET LOCATED ON NORTH RIGHT-OF-WAY OF ROSWELL ROAD (70' R/W); THENCE CONTINUING ALONG SAID RIGHT-OF-WAY NORTH 37 DEGREES 10 MINUTES 10 SECONDS WEST (N37-10'10"W) A: DISTANCE OF 70.00' TO A 1/2" REBAR FOUND LOCATED ON THE NORTH RICHT-OF-WAY OF ROSWELL ROAD (70' R/W): THENCE TURNING AND LEAVING SAID RIGHT-OF-WAY NORTH 57 DEGREES 43 MINUTES 08 SECONDS EAST (NST43'08'E) A DISTANCE OF 210.60° TO A 1° OPEN TOP FOUND; THENCE TURNING AND CONTINUING SOUTH 34 DEGREES 57 MINUTES 45 SECONDS EAST (\$34°57'45"E) A DISTANCE OF 139.70" TO A 3/4" OPEN TOP FOUND; THENCE TURNING AND CONTINUING NORTH 57 DEGREES 34 MINUTES OD SECONDS EAST (N5734'00'E) A DISTANCE OF 94.32" TO A 5/8" REBAR FOUND; THENCE TURNING AND CONTINUING SOUTH 50 DEGREES 18 MINUTES 35 SECONDS EAST (S50'18'35'E) A DISTANCE OF 253.00' TO A \$4 REBAR SET: THENCE TURNING AND CONTINUING SOUTH OF DEGREES 21 MINUTES 51 SECONDS WEST (SOF 21'51"W) A DISTANCE OF 179.79" TO A \$4 REBAR SET: THENCE TURNING AND CONTINUING SOUTH 89 DEGREES 29 MINUTES 26 SECONDS WEST (S89'29'26'W) A DISTANCE OF 280.07' TO 14 REBAR SET LOCATED ON THE NORTH RICHT-OF-WAY OF ROSWELL ROAD (70' R/W) AND BEING THE TRUE POINT-OF-BEGINNING FOR TRACT B AND SAID TRACT CONTAINING J.O.1 ACRES (131,075 Sq. FL.).

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### EXHIBIT C

AN ORDINANCE

02-0

BY: HOWARD SHOOK

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AN ORDINANCE TO AMEND SECTION 16-28.023 OF THE CITY OF ATLANTA ZONING CODE SO AS TO ALLOW THE TRANSFER OF DEVELOPMENT RIGHTS IN CERTAIN CIRCUMSTANCES WHEN PROPERTY ZONED AND DEVELOPED IN ACCORDANCE WITH R-1 THROUGH R-5 STANDARDS ALSO CONTAIN A PORTION ZONED RG; AND FOR OTHER PURPOSES

WHEREAS, there are areas of the City in which property that has been zoned and developed in accordance with the R-1 through R-5 zoning classification contains a portion that is zoned to the RG classification which is adjacent to other property zoned to the RG classification;

WHEREAS, in such circumstances it is in the best interest of the health and welfare of the citizens of the City of Atlanta to allow the owners of these properties to transfer their development density to the adjacent property which is also zoned to the RG classification;

NOW THEREFORE BE AND IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA AS FOLLOWS:

Section 1. That Section 16-28.023(1) of the City of Atlanta Zoning Code is amended by adding a new Section 16-28.023(1) to read as follows:

(1) Intent: For the purposes of preserving buildings of historic-cultural significance and to permit the transfer of density for non-historic property zoned and developed in accordance with the R-1 through R-5 zoning classification that contain a portion that is zoned to the RG classification which is adjacent to other property zoned to the RG classification.

Upon the joint application of parties in interest proposing the transfer of excess development rights of an historic structure, the council may permit any development of such lots if in close proximity of each other. Such development shall not alter the effect of regulations applicable in the district as a whole but may alter the effect on individual lots within the area of agreement.

Upon the joint application of parties in interest proposing the transfer of the development rights of property zoned and developed with the R-1 through R-5 zoning classification that also contain a portion which is zoned RG and the RG portion of that lot is adjacent to other property zoned RG, development density for the RG portion of said lot may be transferred upon the agreement of the landowners of both parcels and the city in accordance with the

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W-03-26 Eachibit A procedures of this section. Upon such transfer, the party in interest of the property from which the RG development density is transferred will have the right to the use of all of such property as if the entire property were zoned to the same R-1 through R-5 zoning classification which is applicable to the balance of the transferring property.

Section 2. That all ordinances or parts of ordinances in conflict with this ordinance shall be repealed.

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